

APPEAL NO. 041622
FILED AUGUST 17, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 15, 2004. The hearing officer determined that: (1) the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter; and (2) the claimant is entitled to sixth quarter SIBs. The claimant appeals the hearing officer's determination with regard to fifth quarter SIBs on sufficiency of the evidence grounds. The respondent/cross-appellant (self-insured) did not file a response. The self-insured cross-appeals the hearing officer's determination with regard to sixth quarter SIBs on sufficiency of the evidence grounds. The claimant urges affirmance of that determination.

DECISION

Affirmed.

CLAIMANT'S APPEAL

A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended effective August 29, 1999, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed. The Appeals Panel has held that, where Texas Workers' Compensation Commission (Commission) records show mailing on a particular day to the claimant's correct address, a mere statement that the decision was not received until a later date is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999. Commission records indicate that the hearing officer's decision was mailed to the claimant's correct address on June 18, 2004. The claimant was deemed to have received the decision on June 23, 2004. The last date for the claimant to timely file an appeal was July 14, 2004. The claimant's appeal was postmarked on July 16, 2004, two days after the 15-day deadline. Therefore, the appeal is untimely and will not be considered.

SELF-INSURED'S CROSS-APPEAL

The hearing officer did not err in determining that the claimant is entitled to sixth quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. At issue is whether the claimant had no ability to work during the sixth quarter qualifying period, thereby satisfying the good faith requirements of Section 408.142(a)(4) and Rule 130.102(d)(4). It was for the hearing officer, as the trier of fact,

to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer essentially found that the claimant provided a sufficient narrative from a doctor which specifically explained how the compensable injury caused a total inability to work and no credible record showed some ability to work. In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge